

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL RAINARD WHITE,

Defendant-Appellant.

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UNPUBLISHED

June 24, 1997

No. 194163

Recorder's Court

LC No. 95-7518

Before: Markman, P.J., and Holbrook, Jr., and O'Connell, JJ.

MEMORANDUM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, and was sentenced to serve twenty-five to fifty years in prison. He appeals as of right and we affirm.

First, defendant claims that he was denied effective assistance of counsel where his trial counsel implicitly admitted defendant's guilt to second-degree murder. We find no merit to this argument. To establish a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that but for counsel's deficient performance a reasonable probability existed that the outcome of the trial would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). Effective assistance of counsel is presumed and the defendant bears a heavy burden of proving otherwise. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). A complete concession of the defendant's guilt constitutes ineffective assistance of counsel. *People v Kryzstopaniec*, 170 Mich App 588, 596; 429 NW2d 828 (1988). However, attempts to persuade the jury to accept the defendant's defense or to find the defendant guilty of a lesser offense are matters of trial strategy that this Court will not second-guess. *People v Emerson (After Remand)*, 203 Mich App 345, 349; 512 NW2d 3 (1994); *People v. Ross*, 145 Mich App 483, 494-495; 378 NW2d 517 (1985). Here, trial counsel argued in closing that defendant's five kicks to the victim's head did not establish the necessary intent to kill to convict defendant of second-degree murder, but only to convict of assault with intent to do great bodily harm. Given defendant's own inculpatory statements to police and the testimony of the victim's injuries, we conclude that counsel's argument was a reasonable, albeit unsuccessful, strategy. *Emerson, supra* at 349. Accordingly, defendant has not established entitlement to appellate relief on this basis.

Next, defendant contends that he was denied a fair and impartial trial because of prosecutorial misconduct. We disagree. The prosecutor's argument that defendant kicked and stomped the victim while bracing his hands on a car parked nearby was proper where it drew reasonable inferences from the evidence. *People v Caldwell*, 122 Mich App 618, 620; 333 NW2d 105 (1983). The other challenged instances of misconduct—e.g., the prosecutor's closing argument that referred to the victim's age, the judge's duty to consider mitigating factors during sentencing, and the overall strength of the prosecution's case—have not been properly preserved for appellate review because no objection was made at trial. *Stanaway*, *supra* at 687; *People v Nantelle*, 215 Mich App 77, 86; 544 NW2d 667 (1996). Had proper objections been made, a curative instruction by the trial court would have eliminated any possibility of prejudice. *Id.* at 87. Accordingly, we decline further review of these claims.

Finally, defendant challenges the scoring of an offense variable and the proportionality of his twenty-five year minimum sentence under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Appellate review of sentencing guidelines calculations is precluded except to the extent that the defendant claims that the sentence is disproportionate. *People v Mitchell*, 454 Mich 145, 177-178; \_\_\_ NW2d \_\_\_ (1997). Here, although defendant's youth and lack of a criminal history were relevant sentencing factors, the nature and severity of the offense were particularly egregious. See, e.g., *People v Piotrowski*, 211 Mich App 527, 532-533; 536 NW2d 292 (1995); *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Accordingly, we find no abuse of discretion by the sentencing court in imposing sentence.

Affirmed.

/s/ Stephen J. Markman  
/s/ Donald E. Holbrook, Jr.  
/s/ Peter D. O'Connell